RE AW BOON HAW DECD. AW SIAN v. THE COMMISSIONER OF ESTATE DUTIES

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Chua J.) April 17, 1967]

[Singapore — Federal Court Civil Appeal No. Y1 of 1967]

Estate Duty — Appeal by person aggrieved — Appeal from High Court — Leave of High Court or Federal Court required before any application can be made — Estate Duty Ordinance (Cap. 162), s. 44(2).

Practice and Procedure — Appeal — No appeal from High Court can be entertained without leave — Estate Duty Ordinance (Cap. 162), s. 44(2), (4).

The question for decision in this appeal was whether or not on the true construction of section 44(2) of the Estate Duty Ordinance the appellant must first obtain the leave of the High Court or the Federal Court before the appellant can be allowed to appeal against the decision of the High Court ([1967] 1 M.L.J. 50).

Held: no appeal shall be allowed in respect of any decision of the High Court upon any application under section 44 except with the leave of the High Court or the Federal Court as provided in section 44(2) of the said Ordinance.

FEDERAL COURT.

R. K. Booker for the appellant.

Amarjit Singh Verick for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is a motion to set aside a notice of appeal filed on the 5th January, 1967 by the appellant, Aw Sian (spinster), against the decision of Choor Singh J. on the 6th December, 1966 on an application made by way of summons-in-chambers entered No. 367 of 1966 in Originating Petition No. 13 of 1966 in the High Court of Singapore.

The originating petition was taken out by the appellant as an aggrieved person under section 44(1) of the Estate Duty Ordinance (Chapter 162). Section 44 provides as follows:—

"44. (1) An executor or other accountable person aggrieved by the certificate of the Commissioner under sub-section (1) of section 36, or by any claim by a notice of assessment by the Commissioner for payment of estate duty or interest thereon, or by the refusal of the Commissioner to return any estate duty or interest thereon alleged to have been overpaid, may, on payment of, or giving security as hereinafter mentioned for, the amount claimed by the Commissioner or such portion of it as is then payable by him, apply to the High Court within three months from the date of the certificate, claim or refusal, as the case may be, and the amount, of the duty and interest shall be determined by the High Court, and if the duty and interest as determined is less than that paid to the Commissioner the excess shall be repaid.

(2) No appeal shall be allowed from any order, direction, determination, or decision of the High Court upon any application under this section except with the leave of the High Court or Federal Court.

(3) The costs of the application shall be in the discretion of the court, and the court, where it appears to the court just, may order the Commissioner to pay on any excess of duty or interest repaid by him interest at the rate of six per centum per annum for such period as appears to the court just.

(4) The High Court, if satisfied that it would impose hardship to require the applicant, as a condition of the application, to pay the whole, or as the case may be, any part of the duty claimed by the Commissioner or of such portion of it as is then payable by him, may allow the application to be brought on payment of no duty, or of such part only of the duty as to the court seems reasonable, and on security to the satisfaction of the court being given for the duty, or so much of the duty as is not so paid, but in such case the court may order interest at the rate of six per centum per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the court."

Having paid a substantial part of the whole amount claimed by the Commissioner of Estate Duties but being unable to pay the balance claimed she applied to the High Court in summons-in-chambers No. 367 of 1966 under section 44(4) to be allowed to proceed with the originating petition without further payment of the estate duty or without furnishing further security.

Choor Singh J. who heard this application held that the appellant must give security to the value of the unpaid duty before she could be allowed to proceed with her application under section 44(1) and it is in respect of this decision that the notice of appeal dated the 5th January, 1967 was filed. No leave to appeal was obtained by the appellant from the High Court or the Federal Court.

The question to be decided in this appeal is whether or not on the true construction of section 44(2) the appellant must first obtain the leave of the High Court or the Federal Court before she can be allowed to appeal against the decision of Choor Singh J. In my opinion she must. It seems to me, applying the ordinary rules of construction, that the words "upon any application under this section" in section 44(2) would cover any application made to the High Court under any sub-section of section 44 as being the clear and grammatical meaning of those words.

That this is the true construction is supported by the fact that section 44 of the Estate Duty Ordinance was a re-enactment of section 80 of Ordinance No. 103 (Stamps) except that the words "in any appeal under this section" appearing in section 80(2) of Ordinance No. 103 were altered to "upon any application under this section" in section 44(2). Some meaning must in my opinion be given to the substitution of the word "application" for the word "appeal" in sub-section (2) and considering the entire section as a whole it is clear that *inter alia* the legislature intended and so enacted that no appeal shall be allowed in respect of any decision of the High Court upon any application under sub-section (4) except with the leave of the High Court or Federal Court.

Tan Ah Tah F.J. and Chua J. concurred.

Order accordingly.

Solicitors: *Allen & Gledhill.*

THIAN THIN SOON & ANOR. v. TI TEOW ENG

[A.C.J. (Gill J.) April 17, 1967]

[K.L. — Civil Appeal No. 29 of 1967]

Landlord and Tenant — Premises required for rebuilding purposes — Public interest — Certificate of Rent Assessment Board — Appeal by tenant — Circumstances under which appeal can be allowed — Control of Rent Ordinance, 1956, ss. 11(1) & 12(1)(m).

This was an appeal against the decision of the Rent Assessment Board giving a certificate to the respondent as owner to demolish certain premises for the purposes of rebuilding as in the board's opinion it was in the public interest to do so.

Held: for the appellants to succeed, by section 11(1) of the Control of Rent Ordinance, 1956, they had to show that the board erred in law. This they could do only by making out either that there was no evidence on which the board directing itself correctly as to the law could have arrived at the conclusion at which it did arrive or that as a matter of inference the evidence on which the board acted should not have led to that conclusion. The court would only interfere if the conclusion could not reasonably be drawn from the primary facts. Taking the evidence as a whole in this case it could not be said that there was no evidence to support the board's decision, or that the evidence was inconsistent with its decision or that the only reasonable conclusion from the evidence contradicted its decision.

Cases referred to:—

(1) *Gurcharan Kaur* v. *Rochi Silk Store* [1959] M.L.J. 229, 231.

(2) *Bracegirdle* v. *Oxley* [1947] K.B. 349, 358.

(3) *Mock How Chun* v. *Lim Choon Fah* K.L. Civil Appeal No. 1 of 1959 (unreported).

CIVIL APPEAL.

N. A. Marjoribanks for the 1st appellant.

Chew Kok Chooi for the 2nd appellant.

R. R. Chelliah for the respondent.

Gill J.: This was an appeal against a decision of the Rent Assessment Board, Kuala Lumpur dated the 27th of August, 1966, granting a certificate under section 12(1)(m) of the Control of Rent Ordinance, 1956 to the effect that it was satisfied that the respondent as owner intended to demolish premises No. 1, Bukit Bintang Road, Kuala Lumpur for the purposes of rebuilding and that in its opinion it was in the public interest that he should be allowed to do so.

The appeal was brought under section 11(1) of the Ordinance which says that "an appeal shall lie on a point of law from any decision of the board." In granting the certificate the board had to be satisfied (1) that the owner intended to demolish the building for the purpose of rebuilding and (2) that in its opinion it was in the public interest that he should be permitted to do so. Both were questions of fact. For the appellant to succeed in his appeal he had to show that the board had erred in law. This he could do, as was laid down by the Court of Appeal in the case of *Gurcharan Kaur* v. *Rochi Silk Store,*[1] only by making out either that there was no evidence on which the board directing itself correctly as to the law could have arrived at the conclusion at which it did arrive or that as a matter of inference the evidence on which the board acted should not have led to that conclusion. As was stated by Denning J. (as he then was) in *Bracegirdle* v. *Oxley,*[2] "the court will only interfere if the conclusion cannot reasonably be drawn from the primary facts."

On the first question, the respondent gave evidence before the board that he intended to demolish the building and to rebuild a modern four-storied building, that he had had prepared by an architect site and building plans which had been approved by the Municipality and that he had made arrangements with the Malayan Banking Limited for an overdraft to meet the cost of the new building. His evidence was corroborated by the architect and a representative of the Malayan Banking Limited. Thus there was overwhelming evidence on which the board was justified in coming to a conclusion that the respondent intended to demolish and rebuild.

As regards the second question, the board had before it the evidence of Mr. Fong Chek Sam, the Acting Commissioner of Town and Country Planning as well as acting Chief Planning Officer for the Municipality of Kuala Lumpur, that it would be in the public interest to have the proposed new building with larger, better and healthier accommodation with a provision for a a car park in that heavily trafficked area. In this connection Ong J. (as he then was) in his judgment in *Mock How Chun (f)* v. *Lim Choon Fah* [3] said:—

> "Though of secondary importance, I think that improvement of the town by voluntary effort is as much to be encouraged in the public interest as the carrying out of town improvement at the public expense, particularly in cases which will result in the provision of better, larger and healthier accommodation in a busy commercial quarter already heavily congested."

Thus it could not be said that there was no evidence to support the finding of the board on this question or that the finding was unreasonable having regard to the evidence.

Taking the evidence as a whole, it could not be said that there was no evidence to support the board's decision, or that the evidence was inconsistent with its decision or that the only reasonable conclusion from the evidence contra-